

February 20, 1997

Senator Leonard M. Blackham  
Senator Alarik F. Myrin  
Utah State Senate  
319 State Capitol Bldg  
Salt Lake City UT 84114

**Subject: Mineral Lease Funds (Report #93-05)**

Dear Legislators:

This survey responds to your request that our office determine if mineral lease money is spent according to legislative intent, particularly those funds spent by the institutions of higher education and the Permanent Community Impact Board (PCIB). In our opinion, the PCIB fully complies with legislative intent. Higher education follows the legislative allocation formula, but because of the formula, has some difficulty complying with the statutory requirement that a majority of the mineral lease monies benefit impacted counties.

While conducting our survey work, we discovered that the Legislative Fiscal Analyst had recently conducted an analysis on how mineral lease funds are spent and had made recommendations for improvement. However, in spite of this work, counties remain concerned with how mineral lease monies, in particular higher education's mineral lease monies, are spent. In our opinion, adequately implementing the recommendations made by the Fiscal Analyst will significantly lessen county concerns. On the other hand, the Legislature may decide that the best solution to current concerns is to change the present method of allocation, and, towards this end, allocation methods used by other states have been provided. However, we also think it is important to remember that, regardless how the money is allocated, some concern will probably always be present.

Before addressing the issues raised, we think it is important to note that the issue of whether mineral lease money is being spent according to legislative intent has been a source of debate for years. In particular, the issue of whether higher education spends the money it is allocated as per legislative intent has been argued for years. The Legislature has the power to

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make whatever changes are necessary to address any concerns it has. For example,

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if the Legislature so desires, it can change the intent language stated in **Utah Code 59-21-1.1(1)(a)**, the general allocation formula stated in **Utah Code 59-21-2.2(2)**, or specific agency distribution formulas such as the one involving higher education stated in **Utah Code 59-21-2.3(d)**. Simply stated, the Legislature has the power to address whatever concerns it may have with mineral lease money. Consequently, we would encourage the Legislature to utilize its power to resolve these continuing debates involving mineral lease monies.

Under the Federal Mineral Lease Act of 1920, lease holders on public land make royalty payments to the federal government for the development and production of non-metalliferous minerals. In Utah, the primary source of these royalties is the commercial production of fossil fuels on federal land held by the U.S. Forest Service and the Bureau of Land Management. Since the enactment of the Mineral Lease Act of 1920, a portion of these royalty payments, called mineral lease payments, has been returned to the states. In FY 1989, mineral lease and bonus revenues returned to Utah totaled \$50.8 million, while in FY 93 revenues returned to Utah totaled \$30.2 million.

The federal government shares these royalty revenues with the states in an effort to help mitigate the local impact of energy and mineral developments on federal lands. In other words, mineral lease money is sent back to the states for allocation to those areas affected by federal land-related mineral development. Given this, it may not be unreasonable to regard mineral lease money as a type of payment-in-lieu of taxes, though technically the payments are not such. However, taking this viewpoint serves as a reminder that mineral lease money is given to the states primarily to aid local affected areas. This viewpoint is stated by Congress in the Mineral Lease Act of 1988, which says that mineral lease money is to be used:

*by such State and its subdivisions, as the legislature of the State may direct giving priority to those subdivisions of the State socially and economically impacted by the development of minerals leased under this chapter, for (i) planning, (ii) construction and maintenance of public facilities and (iii) provisions of public service.*

In addition, it also appears that Congress intended mineral lease monies to provide as much direct aid as possible to the local affected areas. That these monies may not be used to directly help local, affected areas was a source of concern to Congress as stated in Senate Report No. 1262, 94th Congress, 2d Session 9 (1976).

*... local governments are called upon to provide many other services to the federal lands as a direct or indirect result of activities on the federal lands. These services include law enforcement, public health, search and emergency rescue, sewage disposal, library, hospital, recreation, and other general local*

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*governmental services. ... In far too many states, the result has been that the funds are either kept at the State level and not distributed to local governments at all or are parcelled out in a manner which provides shares to local governments other than those in which the federal lands are situated and where the impacts of the revenue and fee generating activities are felt.*

Thus, it appears to us that Congress is stating their desire that mineral lease money be channeled to local governments in a way that provides direct rather than indirect assistance to local, affected governments.

Based on the federal intent language stated in the Mineral Lease Act of 1988 and language stated in Senate Report 1262, it appears that Congress is attempting to give state legislatures great latitude in how to allocate federal mineral lease money. However, as stated in the federal intent language, there are two constraints Congress wants states to follow. First, mineral lease money is to be allocated for three purposes only: (1) planning, (2) the construction and maintenance of public facilities, and (3) the provisions of public service. Second, when making allocations for these purposes, subdivisions socially and economically affected by mineral lease development are to be given priority. In addition, based on Senate Report 1262, it appears that Congress primarily wanted mineral lease allocations to directly aid the counties affected by mineral lease development, although this desire is not specifically stated in the federal intent language.

The Utah Legislature indicates in **Utah Code 59-21-1.(1)(a)** that mineral lease monies will be allocated as per Congress' directive. In fact, it appears that the federal intent language was adopted almost verbatim by Utah. Specifically, the Utah Legislature indicates that socially or economically affected subdivisions will be given priority for mineral lease money and that mineral lease money will be spent for the types of projects Congress specified, with one addition, housing.

In an effort to carry out this intent, the Utah Legislature distributes mineral lease funds and mineral bonus funds, which are a sub-category of mineral lease funds specifically generated from oil-shale leases, on a percentage basis to various areas as directed in **Utah Code 59-21-2.(2)**. Figure I shows the percentage each area receives and the amount of funds each area received in FY 1993.

**Figure I**  
**Mineral Lease Appropriation**  
**Fiscal Year 1993**

Appropriated To	Appropriation Methodology	Amount Appropriated
PCIB - Mineral Lease	32.50 %	\$ 8,835,684
Higher Education *	33.50	5,924,700
UDOT - Special Service Districts	25.00	6,796,680
Water Research Lab	2.25	611,701
Geologic and Mineral Survey	2.25	611,701
Office of Education	2.25	611,701
In Lieu Payments	Balance	2,008,518
PCIB-Mineral Bonus**	70.00	2,169,997

*\* While Higher Education can receive this percentage, there is an inflationary cap that operates.  
 \*\*The remaining 30% goes into the Mineral Bonus Account and is appropriated using the above formulas.*

As stated earlier, the general question asked of our office was one of determining if the allocation of mineral lease money meets the intent of the Legislature. Since the percentage allocations reported in Figure I are general, the determination involving legislative intent must be made at the agency level. In other words, what types of projects are funded by the agency and how does the agency give priority to impacted counties? In conducting our survey, we discovered that the Legislative Fiscal Analyst's office had issued a report in August 1992 addressing this specific issue. As a result, we did limited work in this area, focusing our efforts on determining if the PCIB and higher education spend their allocations in a way that meets the intent of the Legislature.

## **The PCIB And Higher Education Differ In Their Ability To Satisfy County Needs**

The PCIB spends their allocation on appropriate projects and gives priority to affected counties. Higher education, on the other hand, spends its money for appropriate purposes but has a difficult time giving priority to affected counties because of the allocation formula.

In making our determination of meeting intent, we assumed that the language stated in **Utah Code 59-21-1.(1)(a)** is, in fact, the current intent of the Legislature with regard to mineral lease monies. In addition, it is this code language that the counties use in reaching their judgement of whether the state is meeting both the state and federal intent. Thus, in order for legislative intent to be met, two constraints must be recognized. First, mineral lease money must ultimately fund one of the following types of projects: planning, construction and maintenance of public buildings, provision of public service, or housing. Second, when funding these types of projects, priority should be given to those subdivisions socially and economically affected by mineral lease development.

It should be noted that there appear to be different interpretations of how priority can be given. Some would argue that mineral lease money should be viewed as a whole and if 50% of that money benefits affected counties then priority has been given. Others argue (e.g., the affected counties) that each path mineral lease money takes (e.g., PCIB, higher education) must be analyzed to determine if priority was given in that particular path. It is this latter rationale that we adopted in this report and that the Legislative Fiscal Analyst's Office adopted in their 1992 report. However, based on the differing interpretations of priority, the Legislature may want to statutorily clarify how priority is to be viewed.

In our opinion, the allocations given to both the PCIB and higher education meet legislative intent with regard to the types of projects funded. When the PCIB receives its mineral lease allocation, it then grants or loans money for county projects. Of the projects that we reviewed, all appeared to fall into one of the relevant categories. With respect to higher education, we did not review specific projects. However, since education is defined as a public service, it can be said that allocating money to higher education meets the criteria stated by the Legislature.

In terms of giving priority to subdivisions socially and economically affected by mineral lease development, it is our opinion that mineral lease money allocated to the PCIB meets

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this legislative intent. Specifically, when the PCIB chooses which competing county projects will receive mineral lease funding, the impact of mineral lease development on each county is one of the principle determining funding criteria.

Higher education, on the other hand, because of the statutory allocation formula, has trouble directing a majority of mineral lease money to benefit affected counties. Money allocated to the nine higher education institutions is allocated according to **Utah Code 59-21-2.3(d)**. The allocation formula stated in this code appears to give no consideration to mineral lease development. Rather, money allocated to the institutions is based on the proportion of full-time students at an institution to the total number of full-time students at all institutions. Thus, if Weber State University has 10 percent of the total full-time student enrollment, then Weber State would receive 10% of higher education's allocation. The outcome of this allocation methodology is that 88% of higher education's allocation goes to Wasatch Front counties which are not heavily affected mineral lease counties. This outcome makes it very difficult, particularly for the non-research institutions, to have much impact on the heavily affected mineral lease counties which are located primarily in the southern part of the state. This difficulty, in part, may account for the apparent lack of priority given in actual institutional spending.

While priority is not given in the initial allocation to each institution, giving priority to affected counties is also not apparent in actual institutional spending. In justifying their receipt of mineral lease monies, each institution prepares a work plan detailing how mineral lease money will ultimately be spent. This work plan must then be approved by the Board of Regents who must be satisfied that a majority of the funds will be used to aid affected counties. However, in our review of the FY 1993 workplans, it was unclear to us how a determination of priority could be made using the work plans; many of them were general in terms of how their plans were going to benefit affected counties. In addition, given the location of some of the institutions, it was unclear to us how some institutions could provide much benefit to the affected counties at all. In addition, the Mineral Lease Fund Committee, which reviews research projects performed by the University of Utah and Utah State University using mineral lease money, noted in their FY 93 report that a limited number of projects conducted in 1993 were designed to directly act upon affected areas. In our opinion, it is this apparent lack of giving priority to affected counties which fuels concern from mineral lease-affected counties discussed later in this report.

If the Legislature is concerned that the allocation to higher education's institutions does not give priority to affected counties, then one solution would be to amend the allocation formula to somehow consider mineral lease development impact. However, since the money given to the institutions is a dedicated credit, then presumably the legislature would have to fund, from another source, any mineral lease money taken from higher education. Another more practical

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solution may be to encourage higher education to give priority to affected counties by implementing the August 1992 Legislative Fiscal Analyst's recommendations, discussed later in this report.

While the above solutions are one way to address the issue, another solution is to change the legislative intent language. It is possible that the intent stated in **Utah Code 59-21-1.(1)(a)** is not as relevant today as it was in the past. For example, it is possible that the Legislature no longer considers priority to affected counties to be of primary importance. If this is the case, it is the Legislature's prerogative to modify the intent language to best serve Utah's needs.

In summary, we found that the allocation to the PCIB fully meets legislative intent while higher education is hampered by the allocation formula. These conclusions are similar to those reached by the Legislative Fiscal Analyst's August 1992 report that addressed the concern surrounding current mineral lease allocations meeting legislative intent. Since this report was presented a year ago and since it made recommendations to address some important concerns surrounding legislative intent, we wondered if the issues we were asked to address had already been solved. To determine if this were the case or if there were additional concerns that needed to be addressed, we contacted individuals at the county level involved with mineral lease money. We discovered that the mineral lease-affected counties continue to have concerns and that their primary concern continues to focus on higher education's use of mineral lease monies. In addition, counties are also concerned with some PCIB project selection procedures and with possible favoritism involving mineral lease money targeted for county special service districts and channeled through Utah's Department of Transportation.

### **Affected Counties Think That Higher Education's Spending Still Does Not Provide Them Much Direct Benefit**

The mineral lease counties continue to think that higher education does not spend mineral lease monies in a way that directly benefits them. Specifically, money is allocated in such a way that, in terms of location and student population composition, many institutions are unable to give direct benefits to affected counties. In addition to the demographic problem, the counties also think that the two research institutions are not very responsive to their research requests. One possible way to address these concerns is to change the allocation process so that the allocation has some relationship to mineral lease development. Another possible solution would be to adequately implement the recommendations made in the 1992 Fiscal Analyst's report.

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Of the 12 rural representatives we interviewed, 10 identified higher education's spending as their primary concern. This concern seems to result from the fact that the allocation to higher education institutions has no relationship to mineral lease demographics, making direct aid to affected counties unlikely. For example, location is an important demographic. The most affected counties are Carbon, Emery, Sevier, Uintah, and San Juan. However, since over 80% of the full-time students attend school in Salt Lake, Utah, Weber, and Cache counties, the majority of higher education's allocation goes to these counties. In addition, 73% of the students who attend these institutions come from Salt Lake, Utah, Weber, and Cache counties. Yet, these counties produce very little, if any, mineral lease revenue. On the other hand, the College of Eastern Utah (CEU) located in Carbon county, a heavily affected county, receives the smallest allocation because it has the smallest full-time student population. However, although CEU's population is small, 70% of that population is made up of students from the most affected areas. The outcome of this allocation is precisely what Senate Report 1262 criticized-- shares of mineral lease money going to subdivisions other than those in which the federal lands are situated and where the impacts of the revenue and fee generating activities are felt.

Perhaps because the possibility of direct aid to affected counties is relatively remote, it appears to us that some higher education institutions struggle to justify receipt of mineral lease monies in their work programs. For example, Salt Lake Community College submitted the following work plan for FY 94 justifying their receipt of \$803,600:

*Salt Lake Community College uses its total mineral lease funding to support direct instructional costs. The funds are primarily used in the trade and vocational education areas such as Welding, Heavy Duty Mechanics, and specialized fields in the Apprenticeship program, which train students for jobs. Many will use their training in the Wasatch Front area, with such companies as Kennecott Copper and many of the large oil refineries where oil and other minerals are processed. Other students trained by these dollars will go back to other Utah counties to find employment in the oil and mining industries using their skills they have acquired through training at Salt Lake Community College and become productive citizens.*

As can be seen, Salt Lake Community College's work plan does not specifically address how their receipt of mineral lease money will directly benefit mineral lease-affected counties. Instead, the work plan focuses more on the direct benefit accruing to counties along the Wasatch Front, which produce virtually no mineral lease revenue. In defense of Salt Lake Community College, there are two good reasons for their focus. First, 95% of Salt Lake Community College's student population comes from Wasatch Front counties. Second, since Salt Lake Community College is located on the Wasatch Front, it makes sense that most of

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their students would find employment along the Wasatch Front. In our opinion, this is the only kind of justification that Salt Lake Community College, given its demographics, can give. Yet, it is this kind of work plan that frustrates the mineral lease-affected counties.

While colleges and non-research universities may be restricted in their ability to have much impact outside their location, the state's two research universities, Utah State University (USU) and the University of Utah (U of U) are not so restricted. The research performed at these two institutions allows them to directly affect other locations within the state. However, some counties are unsure as to how the money used for research by USU and the U of U directly benefits them. In fact, some of the county representatives reported that they had approached these institutions with research ideas that would benefit their counties and were turned down.

The state committee that analyzes these institutions' mineral lease-funded research projects, the Mineral Lease Fund Committee, supports the above contention of the affected counties. In the committee's FY 93 annual report, the committee states that only a limited number of the research projects conducted by the two institutions during 1993 and proposed for 1994 are designed to directly improve the quality of life among residents of affected areas. While we did not audit specific research projects, the committee's conclusion seems to support the affected counties' position that not much of the money spent on research directly aids them.

In summary, the affected counties are unhappy because of their perception that mineral lease money allocated to higher education does not directly benefit them very much. As we mentioned before, one way of addressing this problem would be to change the allocation formula so that mineral lease impact is somehow considered. For example, the Legislature could decide to allocate some percentage of higher education's portion as they have allocated it in the past, but allocate the remaining percentage based on impact indicators (e.g., location, composition of student population). It should be noted, however, that the money allocated to each institution is a dedicated credit. Thus, if the Legislature reduces their mineral lease allocations, then presumably this money would have to be made up from the general fund.

While changing the allocation formula is one option, another option would be to adequately implement recommendations made by the Legislative Fiscal Analyst. In the August 1992 report, the Fiscal Analyst made a number of recommendations to higher education in an effort to improve higher education's working relationship with the affected counties. Some county representatives think that if these recommendations were implemented, county concerns over this money would be significantly reduced. As a result, if the Legislature wants to address this issue by either changing the allocation formula or

implementing these recommendations, we would favor the implementation of the Fiscal Analyst's recommendations. The recommendations made by the Legislative Fiscal Analyst are the following:

- A. Implement a structured process in the Utah System of Higher Education to receive input from the areas of the state impacted from energy and natural resource development.
- B. Implement a process whereby rural representatives can help evaluate the effectiveness of the two research universities in meeting rural research and development needs.
- C. Implement a feedback mechanism whereby the institutions of higher education convey information regarding their projects to Utahns in general and to impacted areas specifically. Further, the Utah System of Higher Education should implement better reporting procedures for accounting for the money spent. This might require a more detailed project accounting at the university level or a program level accounting procedure at the community college level.
- D. Implement a system for more comprehensive review of work programs by the Board of Regents to assure the mineral lease funding requirements are met.
- E. Require an annual report to the Legislature through the Legislative Fiscal Analyst's Office regarding the use of mineral lease funds for research and development.
- F. Implement a selection process for projects potentially receiving mineral lease funds which prioritizes them based on benefits to the state's economy, effective utilization of the state's natural resources and the local subdivisions impacted by mineral usage.

In discussing these recommendations with representatives of higher education, it is their opinion that these recommendations have been addressed. First, the Board of Regents reviews and approves all institutional workplans that detail how mineral lease money will be spent. In order for the plans to be approved, the Board of Regents must think that a majority of the funds will benefit affected counties. Second, the Mineral Lease Fund Committee of the State Advisory Council on Science and Technology reviews research fund usage. It is the role of this committee to determine if research funds were spent in ways that benefitted mineral lease-affected subdivisions. Third, higher education institutions have been encouraged to take suggestions from areas affected by natural resource development. USU, for example, tries to do this through their extension offices. Finally, rural input can also be obtained when the Community and Economic Development Appropriation Subcommittee reviews higher education's annual mineral lease report.

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While higher education thinks the recommendations have been addressed, they understand that the recommendations have not been fully implemented. The Legislative Fiscal Analyst agrees. The intention of the recommendations was to actively solicit suggestions from the affected counties concerning county needs and how higher education can help meet those needs. The Fiscal Analyst envisioned the Board of Regents actively soliciting suggestions from rural counties on a regular basis. It was also envisioned that USU and the U of U would actively solicit, on a regular basis, rural county information as to what their issues are and how research projects might be structured to help to address these issues. In our opinion, unless this type of active involvement occurs, the concerns focusing on higher education will continue.

While the affected counties are primarily concerned with higher education, some concern was voiced regarding the PCIB.

### **Some Concern Focuses On The Permanent Community Impact Board**

Some affected counties expressed concern over a few procedures followed by the Permanent Community Impact Board (PCIB). First, concern exists over the perception that projects are funded on a first-come, first-serve basis and that projects are not prioritized in terms of importance or quality. Second, some concern exists over the perception that the PCIB will not fund social projects. Finally, some concern was expressed that the PCIB does not follow its own criteria when awarding grants. In our opinion, some of these concerns are valid and the PCIB is considering appropriate changes.

The concern over project prioritization is valid. Specifically, projects have been funded on a first-come, first-serve basis. In addition, it is common knowledge among counties that a project not funded when first presented will eventually be funded, provided the county is persistent. With enough money available so that 98% of the projects presented to the PCIB in FY 93 received funding, project prioritization has not been viewed as critical. Now, however, with an anticipated decline in mineral lease money, the PCIB realizes that project prioritization is important and has taken action.

In their annual planning meeting in July 1993, the PCIB discussed possible methodologies for prioritizing projects. The board adopted one methodological change and discussed other potential changes. The adopted change concerned approval time periods. In the past, projects were approved and funded on a monthly basis. Now projects will be approved and funded on

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a trimester basis. In this way, the board can look at a number of competing projects, prioritize them in order of importance, and fund them accordingly.

The difficult issue will be in designing a methodology that can somehow rank a variety of projects in order of importance. This will require the board to make a subjective determination as to the factors to be considered when determining importance. One proposal being discussed is to prioritize based on the county's mineral lease impact, the type of project presented, and the percent of project funding requested. The PCIB would also like to consider the county's overall prioritization of their proposed project but this is difficult since most rural counties do not have county plans. The Office of Planning and Budget has been involved in a test project helping counties develop long-range plans. If this project continues, the PCIB would view these plans as extremely helpful in their prioritization efforts. The important element from our perspective is that prioritization has been recognized as important and is being addressed by the board.

The concern regarding the board's unwillingness to fund social projects (e.g., drug treatment programs, children-at-risk programs) appears to be unfounded. Board members indicated that they would consider any social projects brought before them; however, in the past three years no county has presented a social project for funding. One reason for this, in addition to the counties' perception of board unwillingness, is the fact that the basic causes underlying social problems are often difficult to identify. As a result, if a social project is funded, it is possible that the money being spent is not effectively solving the problem and is being wasted. In our opinion, identifying basic causes of social problems would be a good way for higher education to give direct aid to affected counties. We understand that higher education has done some research like this, and we hope they will make an organized effort to do more if the affected counties identify a need.

The final concern involves the use of grants. Some counties maintain that the PCIB does not follow its own criteria when giving out grants. We found the criteria for giving grants to be fairly general, stating simply that a grant may be given only when other financing mechanisms cannot be utilized, where no reasonable method of repayment can be identified, or emergency situations regarding public health and/or safety. Determining whether these criteria are being followed would have required an examination of the actual financial status of individual grantees at the time the grant was given and a determination of financing options available at the time. In our opinion, this was outside the scope of the audit. Basically, the PCIB is one of the few boards that can give grants. As a result, there is a great deal of demand placed on this board for grants. When one county gets a grant while another gets a loan, the broad criteria allow counties to complain. It can be said that the PCIB appears to be relatively generous in giving grants. In FY 93, of the total monies awarded by the PCIB, 55% were grants and 45% were loans.

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The PCIB recognizes that the number of grants they award may be a problem since they are charged with creating a revolving loan fund. As a result, the PCIB is taking steps to

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decrease the number of grants given out. One attempt to do this involves the PCIB's interaction with other boards, specifically, water boards.

Often a large water project is not totally financed by one board but receives financing from a number of boards or lenders. In addition, a city or county will have a maximum interest rate for the total financial package that cannot be exceeded if the city or county is to afford the project. All other boards and lenders that finance water projects give loans. The PCIB is the only board that can give grants for water projects and so the PCIB becomes the board of last resort. As a result, cities and counties approach the other boards and lenders first, who, in turn, finance the amount of their choice at the interest rate of their choice. Finally, the city or county approaches the PCIB and requests a grant for the remainder, maintaining that if a grant is not received, the city or county will be unable to afford the project. Thus, the PCIB sometimes finds itself in the position of either giving a grant or of being the board that killed a worthy water project. In an effort to address this problem, the PCIB intends to propose that all boards and lenders involved in financing a water project be allowed to look at the total loan package together before interest rate commitments are made. In this way, the boards can work more cooperatively and accomplish their missions without taking advantage of each other.

### **A Final County Concern Involves Special Service Districts**

A concern was expressed that in their administration of mineral lease monies to county special service districts, UDOT favors transportation special service districts. In other words, while a variety of types of special service districts can qualify to receive the mineral lease money channelled through UDOT, UDOT, because its focus is transportation, was choosing to channel money primarily to transportation special service districts. This was perceived as unfair.

In our opinion, some confusion surrounds this issue. UDOT does not choose which county special service district receives the mineral lease money it allocates. Rather, it is the county's choice as to which special service district receives the mineral lease money administered by UDOT. UDOT acts strictly as a funnel for these mineral lease monies and is involved in this allocation solely to protect against a reduction of the county's payment-in-lieu of taxes money received from the federal government. Thus, we do not see that UDOT can favor any type of special service district.

It is true that most counties have designated a transportation special service district to

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receive the mineral lease money administered by UDOT. Only two counties, Kane and Grand, designated a special service district other than transportation to receive their allocation. County designations initially occurred in 1988 when each county was allowed to establish a special service district of the county's choice to receive this money. The counties' choice was constrained by the fact that certain Department of Interior requirements must be met. In addition, the choice of special service districts was limited to those districts defined in Section 17A-2-1304 of the **Utah Code**. This section of the code states that a county may establish a service district for the purpose of providing within the area of the service district any of the following services or any combination of them:

1. Water
2. Sewerage
3. Drainage
4. Flood Control
5. Garbage
6. Health Care
7. Transportation
8. Recreation
9. Fire Protection
10. Street Lighting

Thus, counties were allowed to choose to which of these ten services they wanted to allocate mineral lease money. While the **Utah Code** originally indicated that the special service district receiving this mineral lease money must be a single purpose district, that restriction was removed in the 1994 **Utah Code**. In conclusion, if counties are unhappy with their designation, we see no reason why they can't change it.

As stated earlier, it is our opinion that some concern is always going to exist with the allocation of mineral lease monies. First, the amount involved is substantial and second the money comes with few requirements. It is also our opinion that if the Legislative Fiscal Analyst's recommendations to higher education are implemented in a way that actively solicits feedback from the rural counties, most of the current concern will vanish. However, if the Legislature wants to consider other allocation formulas as a way of handling the concerns, they should be aware that other states allocate mineral lease monies somewhat differently than does Utah.

## **Alternative Formulas for Allocating Mineral Lease Money Exist**

Other states use different formulas and have different emphases when allocating mineral lease monies. The Legislature could consider adopting or modifying one of these formulas for use if the Legislature considers the alternative method preferable to the state's current method which was shown earlier in Figure I.

It is possible that there are as many ways to allocate mineral lease monies as there are states who allocate these monies. We called five states and found four different formulas or emphases. However, it is possible to separate the formulas into two basic groups: those that allocate to one area and those that allocate to many areas.

Three western states, Wyoming, Montana, and New Mexico, allocate mineral lease money to one area only. Specifically, these states put this money into their general funds. Montana and New Mexico earmark this money for education. This formula is attractive because it is very simple to administer. In addition, it can provide the state with rainy day funds. However, allocating money in this way probably does not meet the federal mandate of giving affected state subdivisions priority with this money.

Two other western states, Colorado and California, allocate mineral lease money to more than one area. Colorado allocates 50% to the producing counties, 25% to the Department of Education, 15% of the Department of Local Affairs, and 10% to the Department of Natural Resources. California allocates 40% to the producing counties and 60% to the Department of Conservation. The appeal of this type of formula is that it places an emphasis on directly aiding affected counties while, at the same time, aiding the state as a whole. One possible drawback is that it may be very difficult to develop an equitable method of direct allocation to the counties. What is seen as equitable by one county may not be seen as equitable by another.

In summary, we think most of the concerns surrounding mineral lease money can be resolved by implementing the Legislative Fiscal Analyst's recommendation for higher education. However, if the Legislature wants to try a different allocation approach as a way of handling the concerns, that is their prerogative.

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**Recommendation:**

1. We recommend that higher education fully implement the Legislative Fiscal Analyst's recommendations in a manner which actively solicits information and suggestions from the affected counties.

We hope this letter provides you with the information you need on these issues. Responses from the Department of Community and Economic Development and the Commissioner of Higher Education are attached. If you have any questions or need additional information, please let me know.

Sincerely,

Wayne L. Welsh  
Auditor General

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